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# A BILL FOR AN ACT

RELATING TO THE OFFICE OF THE OMBUDSMAN.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Under current law, the ombudsman is authorized  
2 to investigate administrative acts of agencies. In so doing,  
3 the ombudsman may make inquiries and obtain relevant information  
4 as the ombudsman deems fit. A recent opinion by the state  
5 attorney general concluded, however, that a narrow  
6 interpretation of state law prohibited the ombudsman from  
7 obtaining state tax returns and return information in connection  
8 with the official duties of the office of the ombudsman.

9           The legislature finds that allowing the office of the  
10 ombudsman to obtain state tax return information about taxpayers  
11 who file state tax returns would assist the ombudsman in  
12 fulfilling the ombudsman's duty to investigate complaints  
13 received concerning the administrative acts of agencies.

14           The purpose of this Act is therefore to permit the office  
15 of the ombudsman to obtain state tax returns and tax return  
16 information necessary to perform the official duties of the  
17 office of the ombudsman, including the investigation of the  
18 administrative acts of agencies.



1 SECTION 2. Chapter 231, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 **"§231- Authority and access to records.** The ombudsman  
5 or an authorized representative shall have access to tax returns  
6 and return information required to be filed pursuant to any law  
7 under title 14 in connection with the official duties of the  
8 office of the ombudsman, including the investigation of the  
9 administrative acts of agencies."

10 SECTION 3. Section 235-116, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§235-116 Disclosure of returns unlawful; penalty.** All  
13 tax returns and return information required to be filed under  
14 this chapter shall be confidential, including any copy of any  
15 portion of a federal return [~~which~~] that may be attached to a  
16 state tax return, or any information reflected in the copy of  
17 [~~such~~] the federal return. It shall be unlawful for any person,  
18 or any officer or employee of the State, to intentionally make  
19 known [~~intentionally~~] information imparted by any income tax  
20 return or estimate made under sections 235-92, 235-94, 235-95,  
21 and 235-97 or wilfully to permit any income tax return or  
22 estimate so made or copy thereof to be seen or examined by any



1 person other than the taxpayer or the taxpayer's authorized  
2 agent, persons duly authorized by the State in connection with  
3 their official duties, the ombudsman or authorized  
4 representative pursuant to section 231- , the Multistate Tax  
5 Commission or the authorized representative thereof, except as  
6 provided by law, and any offense against the foregoing  
7 provisions shall be punished by a fine not exceeding \$500 or by  
8 imprisonment not exceeding one year, or both."

9 SECTION 4. Section 237-34, Hawaii Revised Statutes, is  
10 amended by amending subsection (b) to read as follows:

11 "(b) All tax returns and return information required to be  
12 filed under this chapter, and the report of any investigation of  
13 the return or of the subject matter of the return, shall be  
14 confidential. It shall be unlawful for any person or any  
15 officer or employee of the State to intentionally make known  
16 information imparted by any tax return or return information  
17 filed pursuant to this chapter, or any report of any  
18 investigation of the return or of the subject matter of the  
19 return, or to wilfully permit any [~~sueh~~] return, return  
20 information, or report so made, or any copy thereof, to be seen  
21 or examined by any person; provided that for tax purposes only,  
22 the taxpayer, the taxpayer's authorized agent, or persons with a



1 material interest in the return, return information, or report  
2 may examine them. Unless otherwise provided by law, persons  
3 with a material interest in the return, return information, or  
4 report shall include:

- 5 (1) Trustees;
- 6 (2) Partners;
- 7 (3) Persons named in a board resolution or a one per cent  
8 shareholder in case of a corporate return;
- 9 (4) The person authorized to act for a corporation in  
10 dissolution;
- 11 (5) The shareholder of an S corporation;
- 12 (6) The personal representative, trustee, heir, or  
13 beneficiary of an estate or trust in case of the  
14 estate's or decedent's return;
- 15 (7) The committee, trustee, or guardian of any person in  
16 paragraphs (1) to (6) who is incompetent;
- 17 (8) The trustee in bankruptcy or receiver, and the  
18 attorney-in-fact of any person in paragraphs (1) to  
19 (7);
- 20 (9) Persons duly authorized by the State in connection  
21 with their official duties;



- 1 (10) Any duly accredited tax official of the United States  
2 or of any state or territory;
- 3 (11) The Multistate Tax Commission or its authorized  
4 representative;
- 5 (12) Members of a limited liability company; ~~and~~
- 6 (13) The ombudsman or authorized representative pursuant to  
7 section 231- ; and
- 8 ~~[(13)]~~ (14) A person contractually obligated to pay the  
9 taxes assessed against another when the latter person  
10 is under audit by the department.

11 Any violation of this subsection shall be a misdemeanor."

12 SECTION 5. Section 237D-13, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) All tax returns and return information required to be  
15 filed under this chapter, and the report of any investigation of  
16 the return or of the subject matter of the return, shall be  
17 confidential. It shall be unlawful for any person or any  
18 officer or employee of the State to intentionally make known  
19 information imparted by any tax return or return information  
20 filed pursuant to this chapter, or any report of any  
21 investigation of the return or of the subject matter of the  
22 return, or to wilfully permit any return, return information, or



1 report so made, or any copy thereof, to be seen or examined by  
2 any person; provided that for tax purposes only, the taxpayer,  
3 the taxpayer's authorized agent, or persons with a material  
4 interest in the return, return information, or report may  
5 examine them. Unless otherwise provided by law, persons with a  
6 material interest in the return, return information, or report  
7 shall include:

- 8 (1) Trustees;
- 9 (2) Partners;
- 10 (3) Persons named in a board resolution or a one per cent  
11 shareholder in case of a corporate return;
- 12 (4) The person authorized to act for a corporation in  
13 dissolution;
- 14 (5) The shareholder of an S corporation;
- 15 (6) The personal representative, trustee, heir, or  
16 beneficiary of an estate or trust in case of the  
17 estate's or decedent's return;
- 18 (7) The committee, trustee, or guardian of any person in  
19 paragraphs (1) to (6) who is incompetent;
- 20 (8) The trustee in bankruptcy or receiver, and the  
21 attorney-in-fact of any person in paragraphs (1) to  
22 (7);



- 1           (9) Persons duly authorized by the State in connection  
2           with their official duties;
- 3           (10) Any duly accredited tax official of the United States,  
4           any state or territory, or of any county of this  
5           State;
- 6           (11) The Multistate Tax Commission or its authorized  
7           representative; [and]
- 8           (12) The ombudsman or authorized representative pursuant to  
9           section 231- ; and
- 10          [~~(12)~~] (13) Members of a limited liability company.

11 Any violation of this subsection shall be a misdemeanor.  
12 Nothing in this subsection shall prohibit the publication of  
13 statistics so classified as to prevent the identification of  
14 particular reports or returns and the items of the reports or  
15 returns."

16           SECTION 6. Section 251-12, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18           "(a) All tax returns and return information required to be  
19 filed under this chapter, and the report of any investigation of  
20 the return or of the subject matter of the return, shall be  
21 confidential. It shall be unlawful for any person or any  
22 officer or employee of the State to intentionally make known



1 information imparted by any tax return or return information  
2 filed pursuant to this chapter, or any report of any  
3 investigation of the return or of the subject matter of the  
4 return, or to wilfully permit any [~~such~~] tax return, return  
5 information, or report so made, or any copy thereof, to be seen  
6 or examined by any person; provided that for surcharge tax  
7 purposes, only the lessor or tour vehicle operator, the lessor's  
8 or tour vehicle operator's authorized agent, or persons with a  
9 material interest in the return, return information, or report  
10 may examine them. Unless otherwise provided by law, persons  
11 with a material interest in the return, return information, or  
12 report shall include:

- 13 (1) Trustees;
- 14 (2) Partners;
- 15 (3) Persons named in a board resolution or a one per cent  
16 shareholder in case of a corporate return;
- 17 (4) The person authorized to act for a corporation in  
18 dissolution;
- 19 (5) The shareholder of an S corporation;
- 20 (6) The personal representative, trustee, heir, or  
21 beneficiary of an estate or trust in case of the  
22 estate's or decedent's return;





1 (7) The committee, trustee, or guardian of any person in  
2 paragraphs (1) to (6) who is incompetent;

3 (8) The trustee in bankruptcy or receiver, and the  
4 attorney-in-fact of any person in paragraphs (1) to  
5 (7);

6 (9) Persons duly authorized by the State in connection  
7 with their official duties;

8 (10) Any duly accredited tax official of the United States  
9 or of any state or territory;

10 (11) The Multistate Tax Commission or its authorized  
11 representative; [~~and~~]

12 (12) The ombudsman or authorized representative pursuant to  
13 section 231- ; and

14 [~~(12)~~] (13) Members of a limited liability company.

15 Any violation of this subsection shall be a misdemeanor.

16 Nothing in this subsection shall prohibit the publication of  
17 statistics so classified as to prevent the identification of  
18 particular reports or returns and the items of the reports or  
19 returns."

20 SECTION 7. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22 SECTION 8. This Act shall take effect on July 1, 2006.



HB439, SD1

**Report Title:**

Ombudsman; State Tax Return Information

**Description:**

Authorizes the ombudsman or an authorized representative to obtain state tax returns and return information in connection with the official duties of the office of the ombudsman. Effective 7/1/2006. (SD1)



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